

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**COLUMBIA HOUSING/PNC  
INSTITUTIONAL FUND IV LIMITED  
PARTNERSHIP, COLUMBIA  
HOUSING SLP CORPORATION,  
OCWEN 2000-LLC, PNC BANK, and  
COLUMBIA HOUSING/PNC  
FUND IV, INC.,**

**Plaintiffs,**

V.

**OCWEN FEDERAL BANK FSB,  
OCWEN INVESTMENT  
CORPORATION, and OCWEN  
LOAN SERVICING, LLC,**

**Defendants.**
































NO. \_\_\_\_\_

## COMPLAINT

Plaintiffs Columbia Housing/PNC Institutional Fund IV Limited Partnership, Columbia Housing SLP Corporation, Ocwen 2000-LLC, PNC Bank, and Columbia Housing/PNC Fund IV, Inc. bring this action against Ocwen Federal Bank FSB, Ocwen Investment Corporation, and Ocwen Loan Servicing, LLC, as follows:

**PARTIES**

1. Plaintiff Columbia Housing/PNC Institutional Fund IV Limited Partnership is a Massachusetts limited partnership (“PNC Fund IV”).
2. Plaintiff Columbia Housing SLP Corporation (“Columbia SLP”) is an Oregon corporation, with its principal place of business in Oregon.
3. Plaintiff Ocwen 2000-LLC (“Ocwen 2000”) is a Delaware limited liability company.

4. Plaintiff PNC Bank (“PNC Bank”) is a national banking association located in the State of Pennsylvania.

5. Plaintiff Columbia Housing/PNC Fund IV, Inc. (“Fund IV, Inc.”) is a Massachusetts corporation, with its principal place of business in the State of Pennsylvania.

6. Defendant Ocwen Federal Bank FSB is a dissolved United States federal savings bank (“Ocwen FSB”) that may be served with process by serving c/o Ocwen Financial Corporation at Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301. On information and belief, Ocwen FSB was located in the State of Florida.

7. Defendant Ocwen Investment Corporation is a New Jersey corporation (“Ocwen Investment”) that may be served with process by serving The Prentice Hall Corporation, 150 West State Street, Trenton, NJ 08608. On information and belief, Ocwen Investment’s principal place of business is in the State of Florida.

8. Defendant Ocwen Loan Servicing, LLC (“Ocwen Servicing”) is a Delaware limited liability company that may be served with process by serving Corporation Service Company, 2711 Centerville Rd., Suite 400, Wilmington, DE 19808. On information and belief, Ocwen Servicing purports to be the successor to Ocwen FSB, and has assumed the liabilities of Ocwen FSB.

9. The partners in PNC Fund IV are PNC Bank and Fund IV, Inc.

10. The members in Ocwen 2000 are currently PNC Fund IV and Fund IV, Inc. Ocwen FSB was formerly a member.

11. On information and belief, the members of Ocwen Servicing are citizens of the State of Florida, or states other than Oregon, Pennsylvania or Massachusetts.

**JURISDICTION AND VENUE**

12. Jurisdiction of this action is proper in this Court because there is complete diversity between the parties, and the amount in controversy exceeds \$75,000.00. 28 U.S.C. § 1332.

13. Venue and jurisdiction are proper pursuant to section 10.9 of the herein-defined Ocwen 2000 Operating Agreement which provides that “[e]ach Member irrevocably (a) agrees that any suit, action or other legal proceedings arising out of this Amended and Restated Operating Agreement or any of the transactions contemplated hereby shall be brought in the appropriate State court or the court of the United States of America for the Federal District of the State; (b) consents to the jurisdiction of such court in any suit, action, or proceeding; and (c) waives any objection that he or it may have to the laying of venue of any such suit, action or proceeding in each of such court.” In Article 2 of the agreement, “State” is defined as the State of Delaware.

**FACTUAL ALLEGATIONS AND CLAIMS**

14. This lawsuit seeks resolution of various parties’ rights and obligations under a series of agreements that have been impacted by the dissolution of Ocwen FSB as set forth below.

15. An Amended and Restated Operating Agreement of Ocwen 2000-LLC (the “Ocwen 2000 Operating Agreement”) was entered into on October 30, 2001, to be effective as of September 1, 2001, by Ocwen FSB as managing member (the “Managing Member”) and PNC Fund IV as investor member (the “Investor Member”).

16. A Purchase and Sale Agreement (“PSA”) dated as of September 1, 2000, was entered into by Ocwen FSB (on its own behalf and on behalf of Selling Partnerships identified in the PSA), Ocwen 2000, Ocwen Investment, and PNC Fund IV.

17. An Eighth Amendment to the Purchase and Sale Agreement Including Capital Contribution Agreement (“Eighth Amendment”) was entered into effective September 1, 2001.

18. A Tax Indemnity Agreement (“Tax Indemnity”) dated September 1, 2001, was given by Ocwen FSB to PNC Fund IV, PNC Bank and Fund IV, Inc.

19. On June 30, 2005, Ocwen FSB was voluntarily dissolved.

20. Plaintiffs understand that Defendants (erroneously) contend that although Ocwen FSB dissolved, its assets and liabilities, including its interests in Ocwen 2000, were transferred to an affiliate, Ocwen Servicing, as a successor in interest to Ocwen FSB.

21. Article 2 of the Ocwen 2000 Operating Agreement provides that an “Event of Withdrawal” includes the “voluntary or involuntary dissolution of the Managing Member.” The Investor Member has not waived such Event of Withdrawal, in writing or otherwise.

22. Section 5.3.7 of the Ocwen 2000 Operating Agreement provides that “[i]f an Event of Withdrawal occurs with respect to the Managing Member, the Company shall designate a successor Managing Member in accordance with the Treasury Regulation Sections 301.6231(a)(7)-1 or any successor Regulation, of applicable. . . .”

23. Section 6.2 of the Ocwen 2000 Operating Agreement provides that the “Managing Member may transfer its interest in the Company . . . only with the prior written consent of the Investor Member.” The Investor Member has not consented to any such transfer in writing or otherwise.

24. Following the Event of Withdrawal, Fund IV, Inc. was designated as and became Managing Member of Ocwen 2000, and remains the Managing Member of Ocwen 2000.

25. The Ocwen 2000 Operating Agreement provides that the representations and warranties of Ocwen FSB (and others) "will be true throughout the term of this Amended and Restated Operating Agreement."

26. The representations and warranties include the following:

- (a) "The Managing Member has and shall maintain until at least five (5) years after the due date of the last Capital Contribution Payment a net worth sufficient to permit it to fulfill all of its obligations under this Agreement." (Section 9.1.3).
- (b) "no Event of Withdrawal [which includes voluntary dissolution] has occurred with respect to the Managing Member" (Section 9.1.4).
- (c) "The Managing Member has been duly organized, is validly existing and in good standing . . ." (Section 9.1.6).

27. Section 6.1 of the PSA includes a representation and warranty by Ocwen FSB (on its own behalf and on behalf of the Selling Partnerships and LLC), Ocwen Investment and Ocwen 2000 that "Ocwen [FSB] is chartered under the laws of the United States as a federal savings bank, and its charter is in full force and effect."

28. Section 4.6 of the Eighth Amendment states that "[a]ll representations, warranties, covenants and indemnities contained herein and in [the PSA] shall survive the execution and delivery of this Agreement and continue in full force and effect" until events which have not yet occurred, including "the expiration of the statute of limitations for federal income tax purposes with respect to any federal tax return filed by [PNC Fund IV] which is affected by any of the transactions . . . ." The general statute of limitations for federal income tax purposes is (at least) three (3) years. 26 U.S.C. § 6501.

29. Each of the foregoing was breached by the dissolution of Ocwen FSB.

30. Pursuant to Section 1.1 of the Eighth Amendment, PNC Fund IV is to make certain payments to Ocwen 2000 on certain conditions.

31. Section 1.1 further provides that Ocwen 2000 will, in turn, make certain payments to Ocwen FSB “as agent” for the owner of “remaining subject interests,” such owners being the “remaining operating partnerships.”

32. As of the date of the Eighth Amendment, the Remaining Operating Partnerships were:

- (1) Bay Berry Mews Operating Partnership;
- (2) Capital Heights Operating Partnership;
- (3) Sterling Woods Operating Partnership;
- (4) 202 South Division Operating Partnership;
- (5) 211 Eagle Operating Partnership;
- (6) Gardens Operating Partnership (Country Commons and Rose Garden); and
- (7) Falls Landing Operating Partnership.

33. However, Section 3.3 of the Eighth Amendment provides that the obligation to make payments is subject to offset, *inter alia*, for “the amount of any ‘Indemnity Payment’ which is delinquent” [under the Tax Indemnity], as well as any costs incurred as a consequence of “any receivership or conservatorship of Ocwen initiated by the [FDIC] or any other appropriate federal banking agency. . . .”

34. Pursuant to the Tax Indemnity, Ocwen FSB agreed to indemnify PNC Fund IV, PNC Bank and Fund IV, Inc., against tax credit shortfalls and other tax liability.

35. The dissolution of Ocwen FSB has prevented its ability to perform under the Tax Indemnity, and constitutes a breach and/or anticipatory breach of same.

36. Alternatively, the dissolution of Ocwen FSB, which was approved and supervised by the Office of Thrift Supervision, is equivalent to a receivership or conservatorship.

**Request for Declaratory Judgment**

37. An actual controversy exists between the parties regarding the effect of the dissolution of Ocwen FSB on the parties' respective rights and obligations, if any, pursuant to the PSA, Eighth Amendment, Ocwen 2000 Operating Agreement and/or Tax Indemnity.

38. Resolution of this dispute by the entry of judgment declaring the parties' contractual rights is necessary and appropriate under the existing facts and circumstances.

39. Judgment will serve a useful purpose in clarifying and settling the legal relationship between the parties.

40. Judgment will afford Plaintiffs relief from the uncertainty, insecurity and controversy giving rise to this proceeding.

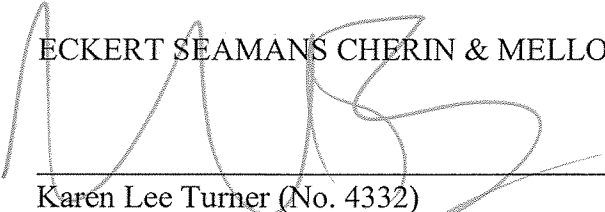
41. Plaintiffs request leave to deposit all payments that are due or may become due to Ocwen 2000 or any Defendant into the registry of the Court, pending final resolution of this case or other order of the Court.

The Plaintiffs respectfully request the Court to enter the following relief:

- a. The Court enter final judgment declaring that Fund IV, Inc. is the Managing Member of Ocwen 2000;
- b. The Court enter final judgment declaring that the Ocwen FSB and any "successor," including Ocwen Services, is not the Managing Member of Ocwen 2000;
- c. The Court enter final judgment that the Tax Indemnity, PSA, Eighth Amendment and/or Ocwen 2000 Operating Agreement have been breached by Defendants;
- d. The Court enter an order that Plaintiffs are not obligated to make any further payments under the PSA or the Eighth Amendment;

- e. The Court enter final judgment against the Defendants in an amount to be determined at trial with interests and costs;
- f. Award Plaintiffs their costs and attorneys' fees; and
- g. Enter such other and further relief that in the interest of justice are appropriate.

ECKERT SEAMANS CHERIN & MELLOTT, LLC



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- and -

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(pro hac vice pending)

ATTORNEYS FOR PLAINTIFFS

U0001988



JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

## APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Columbia Housing/PNC Institutional Fund IV  
Limited Partnership, Columbia Housing SLP  
Corporation, Ocwen 2000-LLC, PNC Bank, and  
(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)  
Columbia Housing/PNC Fund IV, Inc.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Karen Lee Turner, Esquire, Eckert, Seamans Cherin &  
Tollott, LLC, 1515 Market St., 9th Fl., Philadelphia, PA 19102

## DEFENDANTS

Ocwen Federal Bank FSB, Ocwen Investment  
Corporation, and Ocwen Loan Servicing, LLC.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

Unknown  
PA 19102

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |   |   |  |
|---|---|---|--|
| PTF                                     | DEF   | PTF   | DEF  |
| Citizen of This State                   | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input checked="" type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Sec. 1332

Brief description of cause:

Request for declaratory judgment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$  
\$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 06 - 371

**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 3 COPIES OF AO FORM 85.

\_\_\_\_\_  
(Date forms issued)

Shane Handlin

(Signature of Party or their Representative)

Shane Handlin

(Printed name of Party or their Representative)

**Note: Completed receipt will be filed in the Civil Action**